**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929**

**WP(C).No. 1439 of 2007(U)**
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**PETITIONER:**
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**KAMALAMMA DAMODARAN, W/O.LATE PANICKER DAMODARAN, NEMBACKAVELI, PUNNAPRA P.O., ALAPPUZHA.**

**BY ADV. SRI.K.K.SATHISH.**

**RESPONDENTS:**
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1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION (FFP.B) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, ALAPPUZHA.**

**BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.1439/2007:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS' LATE HUSBAND DT. 15/04/1981.**

**EXT.P.2: COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER'S LATE HUSBAND TO THE R.2. DTD. 03/06/1981.**

**EXT.P.3: COPY OF THE NARC ISSUED BY THE CJM COURT, ALLEPPEY DTD. 15/04/1981.**

**EXT.P.4: COPY OF THE LETTER NO. 67595/FFP.B3/2000/GAD DT. 15/03/2003 ISSUED BY THE R.1. TO THE PETITIONER'S LATE HUSBAND.**

**EXT.P.5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE R.1. DT. 22/11/2006.**

**EXT.P.6: COPY OF THE DEATH CERTIFICATE IN RESPECT OF THE PETITIONER'S LATE HUSBAND DT. 22/08/01.**

**EXT.P.7: COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANI DTD. 20/11/2006.**

**EXT.P.8: COPY OF THE ORDER OF SANCTION NO. 119/PVS/104/99-FF (SZ) DT. 18/06/2003 ISSUED BY THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS TO SRI. H.K. CHAKRAPANI.**

**EXT.P.9: TRUE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. IN RESPECT OF SRI. H.K. CHAKRAPANI.**

**RESPONDENT'S EXHIBITS:** **NIL.**

**//TRUE COPY//**

**prv.**

**T.R.RAMACHANDRAN NAIR, J.**

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**WP(C).No. 1439 of 2007-U.**

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**Dated this the 14th day of August, 2007.**

**J U D G M E N T**

**The petitioner is aggrieved by the non-consideration of the application for pension for benefit under the Kerala Freedom Fighters Pension Scheme. The petitioner's late husband was an active participant in the Punnapra-Vayalar Struggle and an arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in Case No.P.E.7/1122 ME subsequent to which he went underground from 7.3.1122 ME to 10.10.1122 ME. Exts.P1 and P2 show that her husband had filed application for pension under the relevant schemes on 15.4.1981. Ext.P3 is the Non-availability of Records Certificate (NARC) issued from the Chief Judicial Magistrate Court, Alappuzha. It appears that no action has been taken on the same and the petitioner's husband expired on 16.7.2001. Thereafter a communication Ext.P4 was given to the petitioner based on the representation dated 1.7.2000 by the petitioner's late husband that he should produce copies of the arrest warrant as well as personal knowledge certificate (PKC) issued by the competent certifiers. The petitioner thereafter produced the personal knowledge certificate issued by Sri.H.K.Chakrapani (Ext.P7), the order granting SSS pension to Sri.H.K.Chakrapani (Ext.P8), copy of the Convict Register related to him**

**(Ext.P9) along with her representation (Ext.P5) and the death certificate of her late husband. Since no action is taken even thereafter, this writ petition has been filed.**

**2. The respondents have filed a counter-affidavit. The only contention taken is that she has not produced any documents as envisaged in the Government circular No.57183 dated 31.12.2003. It is further stated that any application received after 31.3.1994 will be considered only on production of documentary evidence such as warrant of arrest, court records, jail records clearly showing the applicant's sufferings in connection with the freedom struggle. This is a case where the late husband of the petitioner had filed Ext.P1 application which is not disputed in the counter-affidavit. Therefore, the application submitted by the petitioner can only be considered as in continuance of the same and if so, the circular dated 31.12.2003 cannot come in the way of considering the application and granting the pension. I am fortified on this view in the light of the principles stated in *Mukund Lal Bhandari v. Union of India (*AIR 1993 SC 2127). The object of the scheme is to grant pension to bonafide freedom fighters and such benefit cannot be denied on the ground of delay and for want of original records. It is evident from the scheme that, in the absence of copies of warrant of arrest etc., the personal knowledge certificate along with non-availability of record certificate can be accepted. In this case Ext.P3 is the valid NARC issued from**

**the Chief Judicial Magistrate Court, Alappuzha. Apart from that the circular cannot have the effect of restricting the scheme and make it more stringent as far as the conditions for grant of pension is concerned.**

**3. The learned counsel for the petitioner invited my attention to the judgment of this Court in WP(C).No.26694/2003 wherein in a writ petition filed by Sri.P.K.Chellappan relying upon similar certificates of the certifier herein , this Court directed the Government to consider the claim on merits. Therein it is reported that after considering the claim the Government had granted pension to the said freedom fighter. The petitioner is also entitled for a similar treatment.**

**4. The issue has to be decided as per Ext.P9 along with other documents produced. Therefore, there will be a direction to the respondents to consider the matter afresh on the merits (and not on technicalities) in the light of the above findings and appropriate orders will be passed within a period of two months from the date of receipt of a copy of this judgment. Based on the order of sanction the amount will be disbursed to the petitioner. No costs.**

**T.R.RAMACHANDRAN NAIR, JUDGE.**

***Kvs/-***